

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 38 of 1998

For Approval and Signature:

Hon'ble MR.JUSTICE H.R.SHELAT

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

JAYABEN KISHORBHAI RATHOD W/O.DETENUE KISHORSINGH L RATHOD

Versus

COMMISSIONER OF POLICE

Appearance:

MR NM KAPADIA for Petitioner

MR SR DIVETIA ADDL. PUBLIC PROSECUTOR

for Respondent No. 1, 2, 3

CORAM : MR.JUSTICE H.R.SHELAT

Date of decision: 12/03/98

ORAL JUDGEMENT

By this application under Art. 226 of the Constitution of India, the wife of the detenu calls in question the order of detention dt. 25/11/1997 passed by the Police Commissioner for the City of Ahmedabad, invoking his powers under Sec.3(2) of the Gujarat Prevention of Anti-Social Activities Act (for short "the Act"), pursuant to which Kishorsingh @ Kishor Langada

Lalsingh Rathod is arrested and at present kept under detention.

2. Kishorsingh @ Kishor, the detenu is considered to be the catastrophic & truculent by the Police because he by several criminal wrongs and subversive activities, is terrorising the people. The Commissioner of Police had the information that the detenu had indulged in sale of liquor or transporting of liquor which led to several hooch tragedies giving rise to public health problems and causing holocaust. To have smooth dealing in liquor, he used to give threat to people and if required mawl and whop them. Whoever came in his way had to lick the dust, as he used to retaliate badly. He used to pick up quarrel, wield the weapons and run amuck and scare the people. Because of his nefarious activities, people were feeling insecured. The Police Commissioner, therefore, perused the records of the different Police Stations under him and found that about two complaints were lodged with D.C.B. Police Station and Amraiwadi Police Station pertaining to the offence punishable under Sec. 66(1)(b), 65(e), 81 as well as 85 of the Bombay Prohibition Act. As alleged in those complaints, he was found in possession of 95 liters of liquor and 33 bottles of foreign liquor without pass or permit. After inquisition, the Police Commissioner had a reason to believe that the petitioner was a dangerous person and his activities were the challenge to the maintenance of public order. He tried to record the statements of the persons, but no one was ready to come forward to give the statement against the petitioner as every one was under the fear of violence, and was worrying about his safety. After considerable persuasion and assurances that the particulars about their identity would be kept secret, some of the persons showed their willingness to make the statement. About four statements were recorded. On going through those statements, the Police Commissioner found that the petitioner was having a link with Abdul Latif gang known for terrorising the people, and dealing in liquor was not the only activity. The people were robbed, terrified and tortured and public places were at times found desolate. The Police Commissioner, after careful study, when found that the subversive and nefarious activities of the detenu were going berserk, and to curb the same, stern action was necessary; but any action, if taken under the general law, sounding dull was found unproductive. He, therefore, thought that the only way out to help the people feel free, was to pass the order of detention and detain him. With the result, the order in question came to be passed pursuant to which the present detenu is under detention. The wife of the

detenu has, therefore, preferred this application challenging the legality and validity of the impugned order.

4. On several grounds, the impugned order is assailed, but at the time of submissions before me, the learned advocates representing the parties, after I put query, tapered off their submissions confining to the only point namely non-supply of relevant documents. I, will, therefore, confine to that point going to the root of the case, rather than dwelling upon other grounds raised. Under Art. 22(5) of the Constitution of India, whenever such detention order is passed, the detenu has to be informed the grounds of his detention, providing necessary documents and particulars which had influenced the mind of the detaining authority in passing the order of detention so that the detenu can, if he so chooses, make effective representation after receipt thereof. If such right of the detenu to make effective representation is impaired, by not supplying the documents or supplying few of the documents or defective documents, the continued his detention must be held to be illegal.

5. It was brought to my notice at the time of hearing by the petitioner's learned advocate that though mentioned in the copy of the implugned order, the copies of the detention order under which Murgvel @ Podo Sanmugam is detained, committal order, and the reasons of the detention order passed qua Murgvel, the compeer of the detenu, were not supplied. The detenu, therefore, could not make effective representation against the order of detention. I perused the records and File shown to me by the learned A.P.P. Mr. Divetia. Nowhere I found worth the name suggesting about the supply of the documents to the present detenu. Mr. Divetia, the learned APP also laboured much in finding out anything supporting the Police Commissioner from the File, but he also nowhere found about the supply of the above documents, though the same has been mentioned in the order. When there is nothing in the File going to show that the documents were supplied, it must be assumed that the documents in question which were considered at the time of passing the order, are not supplied to the detenu. With the result, the detenu could not make effective representation. When his right to make effective representation is thus impaired, the continued detention of the detenu must be held illegal and unconstitutional.

6. For the aforesaid reason, this application is allowed and the order of detention dt.25/11/1997 passed

by the Police Commissioner for the City of Ahmedabad is hereby quashed and set aside and the detenu Kishorsingh Kishor Langada Lalsing Rathod is ordered to be set at liberty forth with, if no longer required in any other case. Rule accordingly made absolute.

(ccs)